

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: November 2, 2020

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EVE DINEEN and DANIEL

DINEEN, *as legal representatives of a
minor child*, E.D.D.,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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UNPUBLISHED

No. 15-700V

Special Master Gowen

Motion for Decision Dismissing Claim;
Measles-Mumps-Rubella (MMR);
Diphtheria-Tetanus-acellular Pertussis
(DTaP); Hepatitis B (Hep B); Seizure
Disorder.

Mark T. Sadaka, Mark T. Sadaka LLC, Englewood, NJ, for petitioners.

Ryan D. Pyles, United States Department of Justice, Washington, DC, for respondent.

DECISION¹

On July 6, 2015, Eve Dineen and Daniel Dineen, as legal representatives of a minor child E.D.D. (“petitioners”), filed a petition in the National Vaccine Injury Compensation Program.² Petition (ECF No. 1). Petitioners alleged that E.D.D. developed a seizure disorder as a result of receiving measles, mumps, and rubella (“MMR”), diphtheria-tetanus-acellular pertussis (“DTaP”), and Hepatitis B (“Hep B”) vaccinations on July 24, 2012. *Id.* The information in the record, does not establish entitlement to compensation.

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court’s website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. **This means the opinion will be available to anyone with access to the Internet.** Before the opinion is posted on the court’s website, each party has 14 days to file a motion requesting redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). An objecting party must provide the court with a proposed redacted version of the opinion. *Id.* **If neither party files a motion for redaction within 14 days, the opinion will be posted on the court’s website without any changes.** *Id.*

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

On October 30, 2020, petitioners filed a motion for a decision dismissing the petition. Petitioners' Motion ("Pet. Mot.") (ECF No. 103). Petitioners understand that a decision dismissing their petition will result in a judgment against them. *Id.* at 1. They have been advised that such a judgment will end all of their rights in the Vaccine Program. *Id.* Petitioners understand that they may apply for fees and costs once their case is dismissed and judgment is entered against them. *Id.* at ¶ 4. Petitioners' counsel has contacted respondent's counsel regarding respondent's position on this motion and understands that respondent expressly reserves the right, pursuant to 42 U.S.C. § 300aa-15(e), to question the good faith and reasonable basis of the claim and to oppose, if appropriate, the application for fees and costs. *Id.* Respondent otherwise does not oppose this motion. *Id.* Petitioners do intend to protect their rights to file a civil action in the future. *Id.* at 2. Therefore, pursuant to 42 U.S.C. § 300aa-21(a)(2), they intend to elect to reject the Vaccine Program judgment against them and elect to file a civil action. *Id.*

To receive compensation in the Vaccine Program, a petitioner has the burden of proving either: (1) a "Table Injury," i.e., an injury beginning within a specified period of time following receipt of a corresponding vaccine listed on the Vaccine Injury Table (a "Table injury") or (2) an injury that was caused-in-fact by a covered vaccine. 42 U.S.C. §§ 300aa-13(a)(1)(A); 11(c)(1). Here, an examination of the record does not contain persuasive evidence that E.D.D. suffered a "Table Injury". Thus, petitioners are limited to alleging causation-in-fact. The record does not contain persuasive evidence that E.D.D.'s injury was caused in fact or in any way related to the vaccines which he received.

Thus, petitioners' motion is GRANTED. This matter is DISMISSED for insufficient proof. The Clerk of the Court shall enter judgment accordingly.³

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).